

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Article 3
Add Chapter 5.5
Add Section 52.10

Title 14, California Code of Regulations

Re: Optimum Yields/Allocations for Sheephead, Cabezon, and Greenling Fisheries

- I. Date of Initial Statement of Reasons: February 5, 2002
- II. Date of Pre-Adoption Statement of Reasons: March 19, 2002
- III. Date of Final Statement of Reasons: April 12, 2002
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: December 7, 2001
Location: Long Beach, CA
 - (b) Discussion Hearing: Date: March 8, 2002
Location: San Diego, CA
 - (c) Adoption Hearing: Date: April 5, 2002
Location: Long Beach, California

- ## V. Update:

At its April 5, 2002 meeting, the Commission adopted the proposed addition of Section 52.10 providing authority to the Department to close the commercial and/or recreational sectors of the sheephead, cabezon and greenling fisheries upon attainment or projected attainment of the respective optimum yields or allocations.

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

Comments received at the discussion meeting on March 8, 2002 are documented in the Pre-Adoption Statement of Reasons (see attached). A summary of all public comments, including written comments and testimony

provided at the adoption meeting on April 5, 2002, are documented in Table 2. The Department's response to these comments is included.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814

VIII. Location of Department Files:

Department of Fish and Game
Marine Region
20 Lower Ragsdale Drive
Monterey, CA 93940

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

1. The use of alternate OY and allocation numbers that were utilized to manage the sheephead, cabezon and greenling fisheries in 2001 was considered in developing proposed Section 52.10. However, the values outlined in the proposed regulations have been selected by members of the Commission's Marine Subcommittee for managing fisheries in 2002 and beyond until adoption of a Nearshore Fishery Management Plan. Table 1 provides a chronology of these alternate values.

2. Alternative language, which would establish a mechanism to allow for reallocation of a portion of the OY between commercial and recreational fishery sectors once allocations are reached based on tracking catch volume, was also considered in discussions held by the Commission's Marine Subcommittee. However, because of the controversial nature of the subject matter, and the existing Nearshore Fishery Management Plan process which will focus attention on all matters pertaining to allocation, the Commission did not wish to consider developing this alternative in this proposed regulation.

Another consideration in that decision was the fact that the proposed regulations will need to be effective sometime in the summer months in order to provide the Department the authority to close these fisheries upon projected attainment of some of these allocations. Including reallocation provisions at this time would likely require a more lengthy rulemaking process with an extended public comment period and additional discussion meetings, which would conflict with

the goal of having regulations in place to allow the Department to close these fisheries upon attainment of the allocations independent of Commission action in 2002.

(b) No Change Alternative:

As described in Section III(a) of the Initial Statement of Reasons, not adopting the proposed regulations would demonstrate an intention by the Commission to continue to rely on emergency rulemaking action to close fisheries once allocations are reached. Furthermore, the time needed to close a fishery under the emergency rulemaking process would allow for additional harvest to continue. Alternatively, under authority provided in the proposed regulations, the Department would implement the closures on a more timely basis.

(c) Consideration of Alternatives:

In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Adverse Economic Impact on Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as these regulations only serve to establish harvest policies in regulation that were already effective in 2001, as well as provide a mechanism for closing the fisheries once allocations are reached.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative

private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Affect on Housing Costs: None

Updated Informative Digest (Plain English Overview)

At its April 5, 2002 meeting, the Fish and Game Commission adopted the proposed regulations providing authority to the Department to close the commercial and/or recreational sectors of the sheephead, cabezon and greenling fisheries upon attainment or projected attainment of the respective optimum yields (OY) or allocations.

In the summer and fall of 2001, the Commission took three separate emergency actions to close the commercial nearshore fisheries for sheephead, cabezon and greenling because their allocations were exceeded and the fishery OY's were threatened with being exceeded. Emergency action was necessary because neither the OY nor the mechanism for closing the fishery, in the event an allocation was reached, was established in regulation.

The regulations specify the OY values for nearshore fish stocks adopted by the Commission in December 2000. These include 223,483 pounds for California sheephead, 178,728 pounds for cabezon, and 39,823 pounds for greenlings. Allocation values would be established as follows: for sheephead, the recreational allocation is 135,524 pounds, and the commercial allocation is 87,959 pounds; for cabezon, the recreational allocation is 84,330 pounds, and the commercial allocation is 94,398 pounds; and for greenlings, the recreational allocation is 26,403 pounds and the commercial allocation is 13,420 pounds.

The regulations also describe the procedure the Department will follow in making projections of commercial and recreational catch of sheephead, cabezon and greenling using landing receipt information and the best available scientific data. Upon projected attainment of any allocation, the Department shall notify the Commission, commercial permittees and the public of an upcoming closure via Department news releases and/or notification letters at least 10 days in advance of the closure date.

Section 52.10 is added to new Article 3 of new Chapter 5.5, Subdivision 1 of Title 14, California Code of Regulations, to read:

Chapter 5.5. Fishery Management Plans.

Article 3. Nearshore Fishery.

Section 52.10. Take of Sheephead, Cabezon, and Greenling.

(a) Optimum Yields. Based on optimum yields specified for each calendar year, catch may not exceed the following amounts:

(1) California sheephead, 223,483 pounds;

(2) cabezon, 178,728 pounds; and

(3) greenlings of the genus *Hexagrammos*, 39,823 pounds.

(b) Allocation. Annual harvest of these species is allocated between sport and commercial fisheries as follows:

(1) California sheephead.

(A) The recreational fishery is allocated 135,524 pounds.

(B) The commercial fishery is allocated 87,959 pounds.

(2) Cabezon.

(A) The recreational fishery is allocated 84,330 pounds.

(B) The commercial fishery is allocated 94,398 pounds.

(3) Greenlings of the genus *Hexagrammos*.

(A) The recreational fishery is allocated 26,403 pounds.

(B) The commercial fishery is allocated 13,420 pounds.

(c) Mechanism for Fishery Closures. The department will estimate from the current trends in catch and using the best available scientific information the time at which the commercial or recreational fishery allocation for sheephead, cabezon, or greenlings specified in subsection (b) will be reached. The department will close the fishery at the time the allocation is reached or is projected to be reached prior to the end of the calendar year.

(d) The department shall give the public and the commission no less than 10 days notice of any recreational fishery closure pursuant to this Section via a department news release.

(e) The department shall give Nearshore Fishery Permit holders no less than 10 days notice of any commercial fishery closure pursuant to this Section via a notification letter sent to the permittee's address on file with the department. The department shall give the public and the commission no less than 10 days notice of any commercial fishery closure pursuant to this Section via a department news release.

NOTE

Authority cited: Sections 200, 202, 205, 7071 and 8587.1, Fish and Game Code.

Reference: Sections 97, 7056, 7071, 8585.5, 8587, and 8587.1, Fish and Game Code.